

希望的思考

The Offence of Sharing Hope

Reflection on Hope

Reflection on Hope

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思考香港系列

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前言

在 2013 年 1 月 16 日在信報我發表了《公民抗命的最大殺傷力武器》，開啟了佔中運動。經過接近六年時間，中間發生了很多很多事情，到了我與陳健民教授與朱耀明牧師及其他六子，因佔中而被起訴，我寫了及在庭上作這結案陳詞《首次陳詞、最後一課》，或許能為這六年我在香港以公民抗命去爭取民主作一個總結。在這陳詞，我嘗試把法律論據、政治信念、道德感召、信仰呼喚揉合在一起，也是我在這六年所親身經歷的。未來，我仍是懷抱希望，因我所看的，並非地上政權的強大，而是那掌管歷史的上主。即使前路會越益艱難，但只要能夠堅持，黑夜總會過去。

2019 年 1 月 2 日

Preface

On 16 January 2013, I published "The Most Lethal weapon of Civil Disobedience" on the Hong Kong Economic Journal. It kicked off the Occupy Central Movement. After around six years, with many events happened in between, together with Professor Chan Kin-man, Reverend Chu Yiu-ming and six others, we were being prosecuted for Occupy Central. I prepared the "First Submission, Last Lecture" and submitted in the trial as my closing submission. This may sum up what I have done in striving for democracy through civil disobedience in the past six years. In my submission, I tried to integrate legal justifications, political beliefs, moral appeal and spiritual calling together. They were also what I have actually experienced in these six years. To the future, I still embrace hope. I see not the powerfulness of the earthly power but the One who writes the history. Even though the path ahead must be rougher and rougher, the night must pass if we can persist.

2 January 2019

1

公民抗命的
最大殺傷力武器

梁振英應不會在《施政報告》中對 2017 年和 2020 年實現真普選有任何具體承諾。爭取落實真普選是不少港人幾十年來的盼望，下一回政改討論已不能把這問題拖下去。不過，以現時形勢看，北京會讓香港有真普選的機會實在不大。那麼支持實現真普選的港人、泛民政黨和公民社會還有什麼可做？

過去的策略包括舉行大型遊行（如 2003 年七一大遊行）、變相公投（如上一回政改時的五區公投）、佔領政府總部配合絕食（如反國教科時的公民廣場），但面對政改，這些行動能有多大成效，實在成疑，因為北京不想香港有真普選的

意願可能太強，而這些策略所產生的壓力可能還不足夠；因此，要爭取香港落實真普選，可能要準備「殺傷力」更大的武器——佔領中環。

行動以非暴力的公民抗命方式，由示威者違法地長期佔領中環要道，以癱瘓香港的政經中心，迫使北京改變立場。要能產生足夠的「殺傷力」，這行動要符合以下原則：

一、 人數

參與人數必須超過一個關鍵數目，若人數太少，警方可輕易抬走示威者。只要人數超過關鍵數目，在香港，有一萬人以上應可以達到效果，警方除非出動催淚彈和防暴隊，否則不能驅散示威者。要迫使警方使用更大武力，就是把政府處理這次行動所要付出的政治代價增加。當然人數愈多，效果愈大。

二、 意見領袖

參與行動的人要包括社會的意見領袖，尤其是一些過去不曾違法，或不屬激進的政治領袖、前任官員、宗教領袖、學者等。他們的參與，顯示爭議已到關鍵時刻，連這些意見領袖也要被迫以公民抗命的方式表達立場，對整體社會可產生強大的感召力。最好的例子就是印度的甘地和美國的馬丁路德金領導的公民抗命運動。

三、 非暴力

公民抗命的力量在於以違法、但非暴力方式去感召廣大群眾的正義感。一旦涉及暴力，將會大大削弱感召力。要產生最好的效果，組織者可以事前向全港表明，會在某一天某一刻進行佔領行動，並讓參與的人事前簽訂誓言書，明確表明不會使用暴力，只會和平佔領中環要道。

正式行動前，組織者可在進入中環的路口張貼清楚告示，讓駕駛者知道行動將要開始，不要把車輛駛入受影響的地區。示威者要在交通燈號轉為紅色和車輛都停了下來之後，才開始在各路口一起走到馬路中央，那就不會影響到自己及其他人的安全。

四、 持續

佔領行動必須持續，那才能產生和累積足夠的政治能量。換言之，就是把公民廣場搬到中環去。一旦佔領開始，支援者可把各種物資搬到中環要道，建立廣播中心，並盡快透過互聯網及其他媒體直接向全港市民廣播訴求和訊息。行動更可把快樂抗爭加進去，在街頭舉辦嘉年華會式的集會。這必會把整個行動吸引全世界的關注，把施予對手的政治壓力加大。

五、 承擔罪責

公民抗命的行動屬違法行為，所以參與者必須在誓言書表明會承擔罪責。行動結束後，參與者應自行向執法部門自首，交執法部門決定是否對作出起訴。這也是保持此行動的政治感召力的重要部分。

六、 時機

佔領中環是大「殺傷力」武器，絕不可以隨便使用，必須到了最後時刻，也是到了港人追求真普選的夢想徹底幻滅時才可使用。時機把握不好，一方面不能召集足夠的力量參與，另一方面對其他人也不能產生出足夠的政治震撼力。

七、 事先張揚

其實這大「殺傷力」武器並不需要真的使用，只要對手知道這大「殺傷力」武器存在，已可能產生作用。故此，大「殺傷力」武器不是秘密武器，反而要事先張揚，這也是為何在事前要參與者簽訂誓言書。一旦收集過萬人包括多位意見領袖的誓言書，組織者已開始實質部署行動，那就已可能給對手產生強大的政治壓力。

八、 目標

我們必須明白，行動的最終目標是要在香港實現真普選，因此無論行動是否已付緒實行，一旦對手表明願意回到談判桌討論落實真普選的具體措施，那就要結束行動。若對手沒有依從承諾，行動可再次進行。

2

The Most Lethal Weapon of Civil Disobedience

It is very likely that C.Y. Leung will not make any concrete promise in his Policy Address concerning the implementation of genuine universal suffrage in 2017 and 2020. To strive for the implementation of genuine universal suffrage has been the hope of many Hong Kong people for many years. This matter should not be dragged on in the next round of debate of the constitutional reform. However, judging from the present situation, the chance that Beijing will allow Hong Kong to have genuine universal suffrage is not high. For the Hong Kong people who support the implementation of genuine

universal suffrage, the political parties of the pan-democratic camp and the civil society, what can be done?

The effectiveness of past strategies including organizing large scale procession (like the July 1st Rally in 2003), de facto referendum (like the REFERENDUM CAMPAIGN IN FIVE GEOGRAPHICAL CONSTITUENCIES in the last round of constitutional reform), and occupation of the Government Headquarter with hunger strike (like what happened at the Civic Square during the Anti-National Curriculum Movement) is questionable. Beijing's intention of not allowing Hong Kong to have genuine universal suffrage may be too strong and the pressure generated from these strategies may still be not enough. Therefore, in order to strive for the implementation of genuine universal suffrage in Hong Kong, we might have to prepare a weapon that is more "lethal": Occupy Central.

The action is a form of non-violent civil disobedience with protesters occupying main streets in Central illegally for a prolong period. Its objective is to paralyze the political and economic centre of Hong Kong to force Beijing to change its stance. In other to generate sufficient "lethality," the action has to comply with the following principles:

1. Number

The number of people participating must be beyond a critical figure. If the number is too small, the Police can remove the protesters easily. Once the number reaches beyond a critical figure, the Police will not be able to disperse the protesters unless they use tear gas and send in the Anti-riot Squad. In Hong Kong, more than 10,000 people should be able to generate the effect. Making the Police to use a higher degree of force will raise the political cost of the Government in handling this action. The more the people, the bigger will be the effect.

2. Opinion Leaders

People participating in this action must include opinion leaders in the society, especially political leaders, ex-government officials, religious leaders and scholars who have never breached the law and are not radical. Their participation will indicate that the controversy has arrived at a critical moment and even opinion leaders like them are forced to use civil disobedience to express their stance. This will generate a strong appeal to the whole society. The best examples are the

civil disobedience movements led by Gandhi in India and Martin Luther King in the United States.

3. Non-violence

The power of civil disobedience is generated from the illegal but non-violent method appealing to the sense of justice of the general public. If there is any violence, the appeal will be very much weakened. To generate the best effect, the organizers have to make a public announcement in advance that they will go ahead to occupy on a particular day at a particular moment. Those who participate have to sign an oath declaring clearly that they will not use violence and will only occupy the main streets in Central peacefully.

Before the action is taken, the organizers may put up clears signs at junctures leading to Central to warn the drivers that the action is going to start so that they can avoid driving their cars into the affected areas. The protesters should wait until the traffic lights have turned red and all cars have stopped before they walked into the median section of the road from the junctures. Personal safety of the protesters and other people will then not be threatened.

4. Continuity

To generate and accumulate sufficient political energy, the action to occupy has to be continuous. In another words, the Civic Square will be moved to Central. Once the occupation starts, supporters will bring in all kinds of reinforcement to the main streets in Central. A broadcast centre will be established for the demands and messages of the action to be broadcasted to all people in Hong Kong through the Internet and other media. The action may add in elements of happy protest and there can be carnival-style meetings in the street. The whole action should be able to attract international attention and more political pressure upon the opponent can then be generated.

5. Bearing legal responsibility

Action of civil disobedience is illegal. All participants need to declare clearly in the oath that they are going to bear the legal responsibility. After the action, participants will turn themselves in to the enforcement agency for the prosecution department to decide whether they should be prosecuted. This is an important part of the action to maintain its political appeal.

6. Timing

As Occupy Central is a “lethal” weapon, it should never be used lightly. It should only be taken as the last resort when Hong Kong people’s dream for genuine universal suffrage is totally dashed. If the timing is not right, not only that it will fail to gather sufficient number of people to participate, the political impact generated may not be big enough to shock anyone.

7. Announcement in advance

If the opponent knows the existence of this “lethal" weapon, it may not need to be actually used. Therefore, a “lethal" weapon does not need to be a secret weapon. On the contrary, it has to be announced in advance. This is also the reason why participants need to sign the oath in advance. If we can collect the oaths of ten thousand people including the oaths by opinion leaders, the organizers would have already started the actual action of deployment. Immense political pressure may have been generated upon the opponent.

8. Goal

We need to understand that the ultimate goal of the action is the implementation of genuine universal suffrage in Hong Kong. Therefore, no matter the action is actually taken or not, it should come to an end once the opponent expresses his intention to come back to the negotiation table to discuss the concrete measures in implementing genuine universal suffrage. If the opponent fails to honour his promise, the action can then be resumed.

3

首次陳詞
最後一課

公民抗命的精神

首先，這是一宗公民抗命的案子。

我站在這裏，就是為了公民抗命。陳健民教授、朱耀明牧師與我一起發起的「讓愛與和平佔領中環運動」，是一場公民抗命的運動。在以前，少有香港人聽過公民抗命，但現在公民抗命這意念在香港已是家傳戶曉。

終審法院在*律政司對黃之鋒案 Secretary for Justice v Wong Chi Fung* (2018) 21 HKCFAR 35 採納了約翰羅爾斯在《正義論》中為公民抗命所下的定義。公民抗命是「*一項公*

開、非暴力、真誠的政治行為，通常是爲了導致法律上或社會上的改變，所作出的違法行爲。」

在*律政司對黃之鋒案*，賀輔明勳爵是終審法院的非常任法官。在此案，終審法院引述了賀輔明勳爵在 *R v Jones (Margaret)* [2007] 1 AC 136 的說法：「*出於真誠理由的公民抗命在這國家有源遠流長及光榮的歷史。*」終審法院認同公民抗命的概念是同樣適用於其他尊重個人權利的法制如香港。但為何公民抗命是光榮和文明呢？終審法院沒有進一步解釋。

約翰羅爾斯的定義大體只能說出公民抗命的行為部分。 在馬丁路德金博士非常有名關於公民抗命的著作《從伯明罕市監獄發出的信》中，他道出更多公民抗命的意圖部分或公民抗命的精神。這信函是他在 1963 年 4 月 16 日，因在亞拉巴馬州伯明罕市參與示威爭取民權後被判入獄時寫的。

在*信函*中他說：「*一個人若不遵守不公義的法律，必須要公開，充滿愛心和願意接受懲罰。個人因為其良心指出某法律是不公義的，而且甘心接受懲處，是要喚起社會的良知，關注到那中間的不公義，這樣其實是對法律表達了最大的敬意。*」

馬丁路德金博士認為有時法律在表面上是公義的，但實行時卻變得不公義。他說：「*我未得准許而遊行，並因而被捕，現在的確有一條法例，要求遊行須得准許，但這條法例如果是用了來...否定公民運用和平集會和抗議的權利，則會變成不公義。*」

他還說：「*面對一個經常拒絕談判的社區，非暴力的直接行動正是為了營造一次危機，以及加強一種具創造力的張力，逼使對方面對問題，也使問題戲劇地呈現出來，讓其不能再被忽略。*」

馬丁路德金博士對我啟發良多，我們也把這精神栽種在「讓愛與和平佔領中環運動」中。緊隨馬丁路德金博士在公民抗命之路的腳步，我們努力去開啟人心中那份自我犧牲的愛及平靜安穩，而非煽惑憤怒與仇恨。

終審法院在*律政司對黃之鋒案*進一步引述賀輔明勳爵在 *R v Jones (Margaret)* 的說法：「*違法者與執法者都有一些規則要遵守。示威者的行為要合乎比例，並不會導致過量的破壞或不便。以証明他們的真誠信念，他們應接受法律的懲處。*」

雖然終審法院在*律政司對黃之鋒案*沒有引述這部分，賀輔明勳爵在 *R v Jones (Margaret)* 還說：「*另一方面，警察與檢控官的行為也要有所節制，並法官在判刑時應考慮示威者的真誠動機。*」這些有關公民抗命的規則應也適用，終審法院應不會反對。

公民抗命的目的並不是要妨擾公眾，而是要喚起公眾關注社會的不公義，並贏取人們認同社會運動的目標。若一個人被確立了是在進行公民抗命，那他就不可能會意圖造成不合理的阻礙，因那是與公民抗命背道而馳，即使最後因他的行動造成的阻礙是超出了他所能預見的。

非暴力是「讓愛與和平佔領中環運動」的指導原則。公民抗命的行為，就是佔領中環，是運動的最後一步。進行公民抗命時，示威者會坐在馬路上，手扣手，等候警察拘捕，不作反抗。我們計劃及希望達到的佔領程度是合乎比例的。我們相信所會造成的阻礙是合理的。

我相信我們已做了公民抗命中違法者所當做的，我們期望其他人也會做得到他們所當做的。

追求民主

在一宗公民抗命的案件，公民抗命的方法是否合乎比例，不能抽空地談，必須考慮進行那行動的目的。

這是一宗關乎一群深愛香港的香港人的案件，他們相信只有透過引入真普選，才能開啟化解香港深層次矛盾之門。

我就是他們其中一人。與那些一起追尋同一民主夢的人，為了我們的憲法權利，我們已等了超過三十年。當我還在大學讀法律時，我已參與香港的民主運動。現在，我的兒子也剛大學畢業了，香港還未有民主。

馬丁路德金博士在*信函*中還說：「*壓迫者從不自願施予自由，自由是被壓迫者爭取得來的。...如同我們出色的法學家所說，延誤公義，就是否定公義。*」我們在追求公義，但對當權者來說，我們計劃的行動誠然是妨擾。

《基本法》第 45 條規定行政長官的產生辦法最終達

至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。《公民及政治權利國際公約》第 25 條規定：「*凡屬公民，無分第二條所列之任何區別，不受無理限制，均應有權利及機會：... (乙) 在真正、定期之選舉中投票及被選。選舉權必須普及而平等，選舉應以無記名投票法行之，以保證選民意志之自由表現 ...*」

聯合國人權委員會在《第 25 號一般性意見》，為《公民及政治權利國際公約》第 25 (乙) 條中的 「普及而平等」，提供了它的理解和要求。第 15 段說：「*有效落實競選擔任經選舉產生的職位的權利和機會有助於確保享有投票權的人自由挑選候選人。*」第 17 段說：「*不得以政治見解為由剝奪任何人參加競選的權利。*」

全國人民代表大會常務委員會在 2004 年就《基本法》附件一及附件二作出的解釋，實質改變了修改行政長官選舉辦法的憲法程序。在行政長官向立法會提出修改產生辦法的法案前，額外加了兩步。行政長官就是否需要進行修改，須向全國人民代表大會常務委員會提出報告。全國人民代表大會常務委員會根據香港特別行政區的實際情況和循序漸進的原則作出確定。相關法案須經立法會全體議員三分之二多數 通過，行政長官同意，並報全國人民代表大會常務委員會批准或者備案。

在 2014 年 8 月 31 日，全國人民代表大會常務委員會完成了憲法修改程序的第二步，作出了有關行政長官產生辦

法的決定。全國人民代表大會常務委員會除決定行政長官可由普選產生外，就普選行政長官的產生辦法設下了具體及嚴厲的規定。

提名委員會的人數、構成和委員產生辦法都得按照第四任行政長官選舉委員會的人數、構成和委員產生辦法而規定。提名委員會按民主程序只可提名產生二至三名行政長官候選人。每名候選人均須獲得提名委員會全體委員半數以上的支持。

按著全國人民代表大會常務委員會自行設定的程序，全國人民代表大會常務委員會應只有權決定是否批准或不批准行政長官提交的報告，而不能就提名委員會的組成及提名程序，設下詳細的規定。全國人民代表大會常務委員會連自己設定的程序也沒有遵守。

若按著全國人民代表大會常務委員會設下的嚴厲條件去選舉產生行政長官，香港的選民就候選人不會有真正的選擇，因所有不受歡迎的人都會被篩選掉。這與普選的意思是不相符的。

這些香港人進行公民抗命，是要喚起香港社會及世界的關注，中國政府不公義地違背了憲法的承諾，也破壞了它的憲法責任。我們所作的，是為了維護我們及所有香港人的憲法權利，包括了反對我們的行動的人；是為了要我們的主權國履行承諾；是為了爭取香港憲制進行根本改革；及為香港的未來帶來更多公義。

和平示威的權利

這案件是關乎和平示威自由及言論自由的權利。

根據「讓愛與和平佔領中環運動」的原先計劃，舉行公眾集會的地方是遮打道行人專用區、遮打花園及皇后像廣場，時間是由 2014 年 10 月 1 日下午三時正開始，最長也不會超過 2014 年 10 月 5 日。我們期望會有三類人來到。

第一類人已決定了會參與公民抗命。他們會在過了合法的時限後，繼續坐在遮打道上。他們是那些在「讓愛與和平佔領中環運動」意向書上選了第二或第三個選項的人。第二類人決定不會參與公民抗命，而只是來支援第一類人。過了合法的時限後，他們會離開遮打道，去到遮打花園或皇后像廣場。他們是那些在「讓愛與和平佔領中環運動」意向書上選了第一個選項的人。第三類人還未決定是否參與公民抗命的行動。他們可以到合法時限快要過去的最後一刻，才決定是否留在遮打道上。

我們相信警方會有足夠時間把所有參與佔領中環公民抗命的示威者移走。估計會有數千人參與。我們要求參與者要嚴守非暴力的紀律。我們採用了詳細的方法去確保大部分即使不是所有參與者都會跟從。

我們是在行使受《基本法》第 27 條保障的和平示威自由的憲法權利。這也與同受《基本法》第 27 條保障的言論

自由有緊密關係。透過《基本法》第 39 條，言論自由、表達自由、和平集會的自由受《香港人權法》第16及17條的憲法保障，而這些條文與《公民及政治權利國際公約》第19及21是一樣的，是《公民及政治權利國際公約》適用於香港的部分。

若原訂計劃真的執行，那可能會觸犯《公安條例》一些關於組織未經批准集結的規定，但我們相信那會舉行的公眾集會是不會對公眾構成不合理的阻礙的。會被佔領的空間，包括了馬路，是公眾在公眾假期可自由使用的。計劃佔領的時期，首兩天是公眾假期，最後兩天是周末。

當公眾集會的地方轉到政府總部外的添美路、立法會道及龍匯道的行人路及馬路的範圍（下稱「示威區域」），雖然集會的主題、領導、組織及參加者的組成已改變了，但精神卻沒有。在2014年9月27和28日，人們是被邀請來示威區域參加集會的。這仍然是公民在行使和平示威自由及言論自由的權利。

相類似的公眾集會也曾在2012年9月3至8日，在反國民教育運動中在示威區域內舉行。除卻公民在那時候還可以進入公民廣場（政府總部東翼前地），在2012年9月在反國民教育運動的佔領空間，與示威者在2014年9月27和28日在警方封鎖所有通往示威區域通道前所佔領的空間是很相近的。

自 2012 年的反國民教育運動後，這示威區域已被普

遍認同，是可以用來組織有大量公眾參與，反對香港特別行政區政府的大型公眾集會的公共空間。換句話說，公眾都認知示威區域是一個重要場地，讓香港公民聚集去一起行使和平示威自由的權利。

根據此我們也抱有的公眾認知，當我在 2014 年 9 月 28 日凌晨宣布提前佔領中環的時候，我們只可能意圖叫人來到示威區域而不會是任何其他地方。要佔領示威區域以外的地方，沒可能是當時我們所能想到的。沒有人會如此想的。

在*梁國雄對香港特別行政區案 Leung Kwok-hung v. HKSAR* (2005) 8 HKCFAR 229, 終審法院指出：「*和平集會權利涉及一項政府（即行政當局）所須承擔的積極責任，那就是採取合理和適當的措施，使合法的集會能夠和平地進行。然而，這並非一項絕對責任，因為政府不能保證合法的集會定會和平地進行，而政府在選擇採取何等措施方面享有廣泛的酌情權。至於甚麼是合理和適當的措施，則須視乎個別個案中的所有情況而定。*」

如控方証人黃基偉高級警司 (PW2) 在作供時所說，當有太多的示威者聚集在鄰接的行人路，警方為了示威者的安全，就會封鎖示威區域內的馬路。能有一個公共空間讓反對政府的人士和平集會以宣洩他們對香港特別行政區政府的不滿，對香港社會來說，那是一項公共利益。即使在示威區域長期舉行集會是違反《公安條例》，但這不會對公眾構成共同傷害。受影響的部分公眾只是很少，而造成的不便相對來說也是輕微

罪 名 是 散 播 希 望

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終審法院常任法官包致金在*楊美雲對香港特別行政區案 Yeung May-wan v. HKSAR* (2005) 8 HKCFAR 137 中說：「*《基本法》第二十七條下的保障，不會純粹因為集會、遊行或示威對公路上的自由通行造成某種干擾而被撤回。本席認為，除非所造成的干擾屬不合理，即超出可合理地預期公眾可容忍的程度，否則集會、遊行或示威不會失去這項保障。關於這一點，本席認為，大型甚或大規模集會、遊行或示威的參加者往往有理由指出，只有如此大規模的活動才能協助有效地表達他們的意見。除此之外，本席認為最明顯的相關考慮因素是干擾的嚴重程度和干擾為時多久。不過，也可能有其他的相關考慮因素，本席認為包括以下一項：在有關的干擾發生之前，是否有人曾一度或數度作出一項或多項干擾行為？可合理地預期公眾能容許甚麼，乃屬事實和程度的問題，但在回答這個問題時，法庭務須謹記，毫無保留地保存相關自由，正是合理性的定義，而非僅是用作決定是否合理的因素之一。*」

參與示威區域的公眾集會的示威者並不能構成阻礙，因示威區域的馬路是由警方封鎖的。警方封鎖示威區域的馬路是為了保障示威者的安全 ，讓他們可以安全地及和平地行使和平集會的權利。就算在示威區域是造成了一定程度的阻礙，考慮到示威者是在行使他們的和平示威自由的憲法權利，那阻礙也不能是不合理的。

即使當示威者在 2014 年 9 月 28 日走到分域碼頭街

及夏慤道，人們只是被邀請來到示威區域而不是留在那些道路上。警方被要求開放通向示威區域的通路，好讓人們能去到示威區域與示威者們一起。若非通往示威區域的通路被警方封鎖了，大部份人即使不是所有人，應都會進入示威區域，而那些道路就不會被佔領。催淚彈也就沒有需要發放。

警方應有責任去促使公民能在示威區域舉行公眾集會，但警方卻把示威區域封鎖了，阻礙人們來到示威區域參與公眾集會。示威區域內的示威者不可能意圖或造成任何在示威區域以外所出現的阻礙，因他們只是邀請人們來到示威區域與他們一起。

當警方見到已有大量人群在示威區域外意圖進入示威區域，警方仍不負責任地拒絕開放通向示威區域的通路。警方必須為示威區域外所造成的阻礙及之後發生的所有事負上責任。

在警方發放 87 催淚彈及使用過度武力後，一切都改變了。如此發放催淚彈是沒有人能預見的，事情再不是我們所能掌控。到了那時候，我們覺得最重要的事，就是帶領參加運動的人平安回家。

在發放催淚彈後的無數個日與夜，我們竭力用不同方法去盡快結束佔領。我們幫助促使學生領袖與政府主要官員對話。我們與各方商討能否接受以變相公投為退場機制。我們籌組了廣場投票。即使我們這些工作的大部分最後都沒有成效，但我們真的是盡了力及用盡能想到的方法去達到這目標。最後

，我們在 2014 年 12 月 3 日向警方自首。金鐘範圍的佔領在 2014 年 12 月 11 日也結束了。

不恰當檢控

這是關乎不恰當地以公眾妨擾罪作為罪名起訴的案件。

如賀輔明勳爵 in *R v Jones (Margaret)* 所指出，檢控官也有公民抗命的規則要遵守的，他們的行為要有所節制。

在 "Public Nuisance – A Critical Examination," *Cambridge Law Journal* 48(1), March 1989, pp. 55-84, 一文，J. R. Spencer 看到：「*近年差不多所有以公眾妨擾罪來起訴的案件，都出現以下兩種情況的其中一個： 一、當被告人的行為是觸犯了成文法律，通常懲罰是輕微的，檢控官想要以一支更大或額外的棒子去打他； 二、當被告人的行為看來是明顯完全不涉及刑事責任的，檢控官找不到其他罪名可控訴他。*」兵咸勳爵在 *R v Rimmington* [2006] 1 AC 469 採納了 J. R. Spencer 對檢控官在控訴公眾妨擾罪時暗藏的動機的批評。

若有一適當的成文罪行能涵蓋一宗公民抗命案件中的違法行為，我們可以合理地質問為何要以公眾妨擾罪來起訴？即使這不構成濫用程序，但這案件的檢控官一定已違反了賀輔明勳爵在 *R v Jones (Margaret)* 所指出適用於他的公民抗命的規則，因他並沒有節制行為。

這是關乎不恰當地以串謀及煽惑人煽惑為罪名起訴的

案件。

同樣地，在一宗公民抗命的案件及一宗涉及和平示威自由的權利的案件，以串謀及煽惑人煽惑為罪名起訴，那是過度的。在串謀的控罪，控方提出的証據是我們的公開發言。按定義，公民抗命一定是一項公開的行為。若這些公開發言可以用於檢控，那會把所有的公民抗命都扼殺於萌芽階段。那麼說公民抗命是一些光榮之事就變得毫無意義，因公民抗命根本就不可能出現。更惡劣的後果是，社會出現寒蟬效應，很多合理的言論都會被噤聲。對言論自由的限制必然是不合乎比例。

在香港普通法是否有煽惑人煽惑這罪名仍存爭議，但即使真有這罪行，在一宗公民抗命的案件及一宗涉及和平示威自由的權利的案件，以串謀及煽惑人煽惑為罪名起訴，那是過度地、不合理地及不必要地擴展過失責任。

因主罪行是那惹人猜疑的公眾妨擾罪，以煽惑人煽惑去構成公眾妨擾罪來起訴，那更會把過失責任擴展至明顯不合理的程度。若檢控官的行為不是那麼過度和不合理，起訴的罪名是恰當的，我們是不會抗辯的。無論如何，當控罪相信是過度及不合理，我們提出抗辯不應被視為拒絕接受法律的懲處，違反了違法者的公民抗命規則。

有些問題是我這位置難以解答的。若檢控官違反了賀輔明勳爵在 *R v Jones (Margaret)* 所指出的公民抗命的規則，那會有甚麼後果呢？由誰來糾正這錯誤呢？

守護法治

歸根究底，這是一宗關乎香港法治與高度自治的案件。

作為香港法治及憲法的學者，我相信單純依靠司法獨立是不足以維護香港的法治。 缺乏一個真正的民主制度，政府權力會被濫用，公民的基利不會得到充分的保障。沒有民主，要抵抗越來越厲害對「一國兩制」下香港的高度自由的侵害，會是困難的。在「雨傘運動」後，還有很長的路才能到達香港民主之旅的終點。

終審法院常任法官鄧國楨在退休前法庭儀式上致辭說：「*雖然法官決意維護法治，讓其在香港的價值及運用恒久不變，但關鍵在於社會對法官予以由衷的支持。那應是何等形式的支持？我認為，應是全面而徹底的支持。如果法官受到不公的抨擊，請緊守立場並支持他們。可是，不要只因爲某些事件才對他們表示支持。那並不足夠，也可能已經太遲。大家應致力在社會上培養有利於法治的氛圍。我們在香港擁有新聞自由及選舉自由，必須努力發聲，讓你的選票發揮作用。請相信我，自由的代價是要時刻保持警覺。更重要的是，永遠不要放棄或低估自己的力量。如果我們整體社會堅持維護法治，無人可以輕易把它奪走。千萬不要讓此事變得輕而易舉。*」

我們都有責任去守護香港的法治和高度自治。我在這裏，是因我用了生命中很多的年月，直至此時此刻，去守護香港的法治，那亦是香港的高度自治不可或缺的部份。我永不會

放棄，也必會繼續爭取香港的民主。

我相信法治能為公民抗命提供理據。公民抗命與法治有共同的目標，就是追求公義。公民抗命是有效的方法去確保這共同目標能達成，至少從長遠來說，公民抗命能創造一個氛圍，讓其他方法可被用來達成那目標。

若我們真是有罪，那麼我們的罪名就是在香港這艱難的時刻仍敢於去散播希望。入獄，我不懼怕，也不羞愧。若這苦杯是不能挪開，我會無悔地飲下。

4

First Submission

Last Lecture

1. ***First, this is a case of civil disobedience.***

2. Here, I am standing up for civil disobedience.

3. The Occupy Central with Love and Peace Movement, initiated by Professor Chan Kin-man, Reverend Chu Yiu-ming and I, was a movement of civil disobedience.

4. Civil disobedience, known little by Hong Kong people in the past, is now a household idea in Hong Kong.

5. The Court of Final Appeal in *Secretary for Justice v Wong Chi Fung* (2018) 21 HKCFAR 35 at paragraph 70 endorsed the definition of civil disobedience put forward by John Rawls in *A Theory of Justice* (Revised Edition, 1999) at p. 320.

6. Civil disobedience is *"a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."*

7. In *Secretary for Justice v Wong Chi Fung*, the Court of Final Appeal with Lord Hoffmann as the non-permanent judge repeated at paragraph 72 what Lord Hoffmann had said in *R v Jones (Margaret)* [2007] 1 AC 136 at paragraph 89, "*civil disobedience on conscientious grounds has a long and honourable history in this country*." The Court of Final Appeal accepted that the concept of civil disobedience is equally recognisable in a jurisdiction respecting individual rights, like Hong Kong.

8. However, it was not explained why civil disobedience is honourable and civilised.

9. John Rawls' definition spells out more the *actus reus* of civil disobedience.

10. In his very famous work on civil disobedience, *Letter from a Birmingham Jail* reproduced in *The Journal of Negro History*, Vol. 71, No. 1/4 (Winter - Autumn, 1986), pp. 38-44, Dr Martin Luther King Jr. provided more the *mens rea* of civil disobedience or the *spirit of civil disobedience*. The *Letter* was written by him on 16 April 1963 while in jail serving a sentence for participating in civil rights demonstration in Birmingham, Alabama.

11. He said (p. 41), "*One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law.*"

12. To Dr King, a law could be just on its face but unjust in its application. He said in the *Letter* (p. 40-41), "*I was arrested…on a charge of parading without a permit. Now there is nothing wrong with an ordinance which requires a permit for a parade, but when the ordinance is used to …deny citizens the First Amendment privilege of peaceful assembly and peaceful protest, then it becomes unjust.*"

13. He also said (p. 39), "*Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatise the issue that it can no longer be ignored*."

14. I was inspired very much by Dr King, and this is the same spirit we have implanted in the Occupy Central with Love and Peace Movement. Following Dr King's steps closely in the path of civil disobedience, we strive to *inspire* self-sacrificing love and peacefulness but not to incite anger and hatred.

15. The Court of Final Appeal in *Secretary for Justice v Wong Chi Fung* further cited what Lord Hoffmann had said in *R v Jones (Margaret)*, "*[T]here are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law*."

16. Though the Court of Final Appeal did not quote this part of the judgment in *Secretary for Justice v Wong Chi Fung*, Lord Hoffmann in *R v Jones (Margaret)* also said, "*The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account*." These other conventions of civil disobedience should also apply, and it is not likely that the Court of Final Appeal would object.

17. The purpose of civil disobedience is not to obstruct the public but to arouse public concern to the injustice in society and to win sympathy from the public on the cause of the social movement.

18. If it is found that a person is committing an act of civil disobedience, he could not have intended to cause unreasonable obstruction as it will defeat the whole purpose of civil disobedience itself even if his action might at the end have caused a degree of obstruction more than he could have known.

19. Non-violence was the overarching principle of the Occupy Central with Love and Peace Movement. The act of civil disobedience, i.e. occupy Central, was the last resort of the movement. The manner of civil disobedience by the protesters was to sit down together on the street with arms locked and wait to be arrested by the police without struggling. The scale of occupation was planned and intended to be proportionate. We believe that the obstruction must be reasonable.

20. I believe we have done our part as the law-breaker in civil disobedience. We expect the others will do their parts.

21. In a case of civil disobedience, whether the means of civil disobedience is proportionate; contextually, the end must be considered.

22. ***This is a case about some Hong Kong people who love Hong Kong very much and believe that only through the introduction of genuine universal suffrage could a door be opened to resolving the deep-seated conflicts in Hong Kong.***

23. I am one of those Hong Kong people. With all people who share the same democratic dream, we have waited for more than thirty years for our constitutional rights. Since the time I was a law student at the University, I had been involved in Hong Kong's Democratic Movement. Now, my son has just graduated from the University, democracy is still nowhere in Hong Kong.

24. Also said by Dr King in the *Letter* (p. 292), *"…freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed…We must come to see with the distinguished jurist of yesterday that 'justice too long delayed is justice denied.*'"

25. In seeking for justice, our planned action in the eyes of the powerholders may indeed be a nuisance.

26. According to Article 45 of the Basic Law the ultimate aim of the selection of the Chief Executive ("CE") is by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

27. Article 25 of the International Covenant on Civil and Political Rights ("ICCPR") provides that, "*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: ... (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors…*"

28. The United Nations Human Rights Committee gave its understanding and requirements of universal and equal suffrage under Article 25 of the ICCPR in its General Comment No. 25 adopted on 12 July 1996. (CCPR/C/21/Rev.1/Add.7).

29. Paragraph 15 provides that, "*The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates*."

30. Paragraph 17 provides that, "*political opinion may not be used as a ground to deprive any person of the right to stand for election*."

31. Through its Interpretation of Annex I and Annex II of the Basic Law in 2004, the Standing Committee of the National People's Congress ("NPCSC") in effect changed the constitutional procedures to amend the election methods of the CE.

32. Before the CE can put forward bills on the amendments to the election methods to the Legislative Council ("LegCo"), two more steps are added. The CE is required to make a report to the NPCSC as regards whether there is a need to make an amendment and the NPCSC must make a determination in the light of the actual situation in the Hong Kong Special Administrative Region ("HKSAR") and in accordance

with the principle of gradual and orderly progress. Such bills need to have the endorsement of a two-thirds majority of all the members of the LegCo and the consent of the CE, and they shall be reported to the NPCSC.

33. On 31 August 2014, the NPCSC completed the second step of the constitutional reform process by issuing a decision on the election method of the CE. The NPCSC laid down specific and stringent requirements on the election method of the CE by universal suffrage in addition to the determination that starting from 2017 the selection of the CE may be implemented by the method of universal suffrage.

34. The number of members, composition and formation of the Nomination Committee ("NC") have to be made in accordance with the number of members, composition and formation method of the Election Committee for the 4th CE. The NC can only nominate two to three candidates for the office of CE in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the nominating committee.

35. In accordance with the procedure added by itself, the NPCSC should only have the power to make a determination of approving or not approving the CE's report but not providing detailed requirements on the composition and nomination procedures of the NC. The NPCSC has failed to follow the procedures set by itself.

36. If the requirements set by the NPCSC on the election method of the CE were to be followed, electors in Hong Kong would not have a genuine choice of candidates in the election as all unwelcome candidates would be screened out. This is not compatible with the meaning of universal suffrage.

37. These Hong Kong people resorted to civil disobedience to *arouse more concern in the community and the world* that the Chinese Government had unjustly broken its constitutional promise and breached its constitutional obligation.

38. We did all we had done to protect our constitutional rights and the constitutional rights of all Hong Kong people including those who disagreed with our action, to

demand a constitutional promise to be honored by our sovereign, to strive for a fundamental reform in the constitutional system of Hong Kong, and to bring more justice to the future of Hong Kong.

39. ***This is also a case of the right to freedom of peaceful demonstration and the right to freedom of speech.***

40. According to the original plan of the Occupy Central with Love and Peace Movement, the public meeting to be organised was to be held at the Chater Road Pedestrian Precinct, the Chater Garden, and the Statue Square, from 3:00 pm on 1 October 2014 to the latest on 5 October 2014.

41. We expected that there would be three groups of people coming. The first group of people decided to commit the act of civil disobedience. They would continue to sit on the Chater Road after the notified time expired. They would be the people who had chosen the second or the third option in the letter of intent of the Occupy Central with Love and Peace Movement.

42. The second group of people decided not to commit the act of civil disobedience but just came to support the first group of people. They would leave the Chater Road after the notified time expired and move to the Chater Garden or the Statue Square. They would be the people who had chosen the first option in the letter of intent of the Occupy Central with Love and Peace Movement.

43. The third group of people might not have made up their mind yet on whether they would join the action of civil disobedience. They could decide at the very last moment when the notified time expired by choosing where to stay.

44. We believed that the police would have sufficient time to remove all the protesters joining the act of civil disobedience of occupy Central; estimated to be a few thousands.

45. We asked all participants to observe the discipline of non-violence strictly. We adopted specific measures to ensure most if not all participants would follow.

46. We were exercising our constitutional right to the freedom of peaceful demonstration protected by Article 27 of the Basic Law. It is also closely associated with the right to freedom of speech also protected by Article 27 of the Basic Law. By Article 39 of the Basic Law, constitutional protection is also given to freedom of opinion, of expression and of peaceful assembly as provided for in Articles 16 and 17 of the Hong Kong Bill of Rights, those articles being the equivalents of Articles 19 and 21 of the ICCPR and representing part of the ICCPR as applied to Hong Kong.

47. If the original plan were to be carried out, it might breach some requirements under the Public Order Ordinance concerning the organisation of unauthorised assembly. However, we believed that the public meeting to be held would not cause unreasonable obstruction to the public.

48. The space to be occupied, including the carriageway, can be freely used by every citizen on public holidays.

49. The first two days of the planned occupation were public holidays and the last two days were the weekend.

50. When the venue of the public meeting was moved to the area outside the Central Government Offices including the pavements and carriageways at Tim Mei Avenue, Legislative Council Road and Lung Hui Road ("the Demonstration Area"), though the public meeting's themes, leadership, organization and composition of participants had changed, the spirit had not.

51. People were asked to join the public meeting in the Demonstration Area on 27 and 28 September 2014. It was still an exercise of their constitutional right to freedom of peaceful demonstration and freedom of speech by Hong Kong citizens.

52. Similar public meetings had been held in the Demonstration Area during the Anti-national Curriculum Campaign from 3-9 September 2012. Citizens at that time could have access to the Civic Square, i.e. the East Wing Forecourt of the Central Government Offices. Other than that, the space being occupied by protesters during the Anti-national Curriculum Campaign in September 2012 was very similar to the space that was being occupied by

protesters on 27 and 28 September 2014 before the police cordoned all access to the Demonstration Area.

53. Since the Anti-national Curriculum Campaign in 2012, the Demonstration Area has been generally recognised to be the public space that can be used for organising big public meetings with a large number of people participating to protest against the Government of the HKSAR. In another word, the Demonstration Area is known to the public to be an important venue for citizens of Hong Kong to gather and to exercise their right to peaceful demonstration together.

54. On the basis of this public knowledge that we share, at the time when I announced the early beginning of the Occupy Central in the small hours on 28 September 2014, we could only be intending to ask people to come to the Demonstration Area but no other place. Occupying places outside the Demonstration Area could not have been in the thought of us at that time. No one could have intended that.

55. The Court of Final Appeal in *Leung Kwok-hung v. HKSAR* (2005) 8 HKCFAR 229 at paragraph 22 pointed

out that, "*...the right of peaceful assembly involves a positive duty on the part of the Government, that is the executive authorities, to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully*."

56. As Superintendent Wong Key-wai (PW81) said in his evidence, the police closed the carriageways in the Demonstration Area for the safety of the protesters when there were too many protesters on the adjacent pavements.

57. Having a public space for the public opposing the Government of the HKSAR to gather and vent their dissatisfaction against the Government peacefully is a public benefit to the society of Hong Kong. No common injury to the public can be caused even if a public meeting is being held in the Demonstration Area in contravention with the Public Order Ordinance for a prolonged period. The section of the public that will be affected is very small and the inconvenience caused is comparatively insignificant.

58. Mr Justice Bokhary PJ said in *Yeung May-wan v. HKSAR* (2005) 8 HKCFAR 137 at paragraph 144, "*The mere fact that an assembly, a procession or a demonstration causes some interference with free passage along a highway does not take away its protection under art. 27 of the Basic Law. In my view, it would not lose such protection unless the interference caused is unreasonable in the sense of exceeding what the public can reasonably be expected to tolerate. As to that, I think that the participants in a large or even massive assembly, procession or demonstration will often be able to say with justification that their point could not be nearly as effectively made by anything on a smaller scale. Subject to this, the most obviously relevant considerations are, I think, how substantial the interference is and how long it lasts. But other considerations can be relevant, too. These include, I think, whether the interference concerned had been recently preceded by another act or other acts of interference on another occasion or other occasions. What the public can reasonably be expected to tolerate is a question of fact and degree. But when answering this question, a court must always remember that preservation of the freedom in full measure defines*

reasonableness and is not merely a factor in deciding what is reasonable."

59. No obstruction can be caused by the protesters participating in a public meeting in the Demonstration Area as all carriageways in the Demonstration Area were closed by the police. The police closed the carriageways in the Demonstration Area to ensure the protesters there can exercise their right to freedom of peaceful assembly safely and peacefully. Even if there were to be some degree of obstruction in the Demonstration Area, the obstruction could not be unreasonable in light of the constitutional right to freedom of peaceful demonstration of the protesters.

60. Even after protesters walked into the carriageways of Fenwick Pier Street and Harcourt Road on 28 September 2014, people were continuing to be asked to come to the Demonstration Area but not to stay on those roads. The police were demanded to reopen the access to the Demonstration Area so that people could come and join the protesters in the Demonstration Area. If the access to the Demonstration Area were not blocked by the police, most if not all of the people out there would have entered

the Demonstration Area and those roads would not have been occupied. No tear gas would need to be fired.

61. It should be the duty of the police to facilitate the holding of a public meeting in the Demonstration Area by citizens. However, the police had cordoned the Demonstration Area and prevented people from joining the public meeting in the Demonstration Area. Any obstruction outside the Demonstration Area could not be intended or caused by the protesters gathering in the Demonstration Area who were just inviting other people to join them in the Demonstration Area.

62. The police irresponsibly refused to reopen the access to the Demonstration Area even after the police saw that a large number of people were gathering outside the Demonstration Area intending to enter the Demonstration Area. The police must be responsible for the obstruction outside the Demonstration Area and what happened afterwards.

63. Everything changed after the firing of the 87 canisters of tear gas and excessive force had been used by the police.

64. The firing of tear gas in such a way was something that no one could have known. Matters were no longer in our control. By then, the most important thing we wanted to do was to bring everyone home safe.

65. In the many days and nights following the firing of the tear gas, we had tried to use different methods to bring an earlier end of the occupation. We helped arrange a dialogue between the student leaders and senior government officials. We tried to convince others to accept an arrangement of de facto referendum as a mechanism to retreat. We organised a plaza voting. Even though most of the things we had done came to be futile, we did work very hard and exhausted all methods we could think of to achieve this goal. In the end, we surrendered to the police on 3 December 2014. The occupation at the Admiralty area ended on 11 December 2014.

66. ***This is a case about the improperness of laying charges relating to public nuisance.***

67. As asserted by Lord Hoffmann in *R v Jones (Margaret),* prosecutors also have conventions to follow in a case of civil disobedience. They should behave with restraint.

68. In "Public Nuisance – A Critical Examination," *Cambridge Law Journal* 48(1), March 1989, pp. 55-84, at p. 77, J. R. Spencer observed that, "*...almost all the prosecutions for public nuisance in recent years seem to have taken place in one of two situations: first, where the defendant's behaviour amounted to a statutory offence, typically punishable with a small penalty, and the prosecutor wanted a bigger or extra stick to beat him with, and secondly, where the defendant's behaviour was not obviously criminal at all and the prosecutor could think of nothing else to charge him with*."

69. Lord Bingham in *R v Rimmington* [2006] 1 AC 469 at paragraph 37 endorsed the criticisms of J. R. Spencer concerning the ulterior motive of a prosecutor laying a charge of public nuisance.

70. If there is an appropriate statutory offence to cover the unlawful act in a case of civil disobedience, one would rightly ask why laying the charges of public nuisance?

Even though it might *not* be an abuse of process, the prosecutor in this case must have breached the convention of civil disobedience applicable to him as asserted by Lord Hoffmann in *R v Jones (Margaret)* for failing to behave with restraint.

71. ***This is a case about the improperness of laying charges of conspiracy and incitement to incite.***

72. Similarly, laying charges of conspiracy and incitement to incite is excessive in a case of civil disobedience and a case of the right to freedom of peaceful demonstration.

73. Pieces of evidence relied upon by the prosecution in the conspiracy charge were public statements made by us. Civil disobedience by definition must be a public act. If these public statements can be used to support the prosecution, all civil disobedience at its formation stage will be suppressed. It is meaningless to talk about civil disobedience as something honourable as no civil disobedience would have happened. Even worse, a chilling effect will be generated in society, and many legitimate speeches will be silenced. The restriction on the right to freedom of speech must be disproportionate.

74. Whether there can be an offence of incitement to incite under the Hong Kong common law is still disputable. Even if there is such an offence, laying charges of incitement to incite in a case of civil disobedience and a case of the right to freedom of peaceful demonstration must have extended culpability excessively, unreasonably and unnecessarily.

75. Since the substantial offence is the questionable offence of public nuisance, laying a charge of incitement to incite public nuisance must have extended culpability to even a manifestly unreasonable degree.

76. If the prosecutor has not acted in such an excessive and unreasonable manner and proper charges were laid, we would not have filed a defence.

77. Nonetheless, filing a defence against charges believed to be excessive and unreasonable should not be considered to be failing to comply with the conventions of civil disobedience on the part of the law-breakers as not accepting the penalties imposed by the law.

78. There are some questions that I am not in the position to answer. If the prosecutor fails to comply with the convention of civil disobedience asserted by Lord Hoffmann in *R v Jones (Margaret)*, what will be the consequence? Who is responsible for rectifying the wrongs?

79. ***At the end, this is a case about Hong Kong's rule of law and high degree of autonomy.***

80. As a scholar of the rule of law and the constitutional law of Hong Kong, I believe that merely having judicial independence is not sufficient to maintain the rule of law in Hong Kong.

81. Without a genuinely democratic system, powers of the government can still be exercised arbitrarily, and the fundamental rights of citizens will not be adequately protected. Also, without democracy, it will be difficult to withstand the more and more severe encroachment on Hong Kong's high degree of autonomy under the policy of "One Country Two System". After the Umbrella Movement, there is still a long way before we can reach the destination of Hong Kong's journey to democracy.

82. Mr Justice Tang, PJ at his *Farewell Sitting* (2018) 21 HKCFAR 530 at paragraphs 17-19 said, "…*although judges are prepared to uphold the rule of law as it has always been understood and applied in Hong Kong, the community must be willing to support them. In what form the support should take? I think the support should be all-embracing. If the judiciary is unfairly attacked, you should hold firm and stand up for them. But, support should not only be events driven. That is not enough. It may be too late. You should endeavour to nurture an atmosphere friendly to the rule of law. We have a free press and free elections in Hong Kong. Make your voice heard and your vote count. Believe me, the price of freedom is indeed eternal vigilance. Above all else, do not give up or underestimate your strength. If we as a community insist on the rule of law, it cannot be taken from us easily. Do not make it easy*."

83. We all have our duty to defend the rule of law and the high degree of autonomy in Hong Kong.

84. I am here because I have used many years of my life and up to this very moment to defend the rule of law of Hong

Kong, an integral part of Hong Kong's high degree of autonomy. I will also never give up on striving for Hong Kong's democracy.

85. I believe that civil disobedience can be justified by the rule of law. Civil disobedience and the rule of law share the same gaol in *pursuing justice*. Civil disobedience is an effective way of securing the attainment of this common goal at least in the long run by *creating the climate* within which other means can be used to achieve that goal. (See Benny Yiu-ting Tai, "Civil Disobedience and the Rule of Law," in Ng, M. H. (Ed.), Wong, J. D. (Ed.). (2017). *Civil Unrest and Governance in Hong Kong*. London: Routledge. At pp. 141-162.)

86. If we were to be guilty, we will be guilty for daring to share hope at this difficult time in Hong Kong.

87. I am not afraid or ashamed of going to prison. If this is the cup I must take, I will drink with no regret.

List of Authorities

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5. UN Human Rights Committee, *General Comment No 25* adopted on 12 July 1996 (on Article 25 of the International Covenant on Civil and Political Rights), CCPR/C/21/Rev.1/Add.7, paragraph 15 and 17.
6. *Leung Kwok-hung v HKSAR* (2005) 8 HKCFAR 229, paragraph 22.
7. *Yeung May-wan v HKSAR* (2005) 8 HKCFAR 137, paragraph 144.
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9. *R v Rimmington* [2006] 1 AC 469, paragraph 37.

10. *Farewell Sitting for the Honourable Mr Justice Tang PJ* (2018) 21 HKCFAR 530, Tang PJ, paragraphs 17-19.

11. Benny Yiu-ting Tai, “Civil Disobedience and the Rule of Law” in Ng, M. H. (Ed.), Wong, J. D. (Ed.). (2017). *Civil Unrest and Governance in Hong Kong*. London: Routledge. At pp. 141-162.

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戴耀廷出生於香港，並於香港受教育。於一九八六年，他獲香港大學法律學士，並於翌年獲香港大學法律專業文憑。畢業後於香港城市理工學院法律系任助理講師。在一九八九年赴英國倫敦大學經濟及政治學院修讀法律，於一九九零年獲頒法律碩士（主修公法）。回港後即開始香港大學法律系的教學工作，現為香港大學法律系副教授，曾任香港大學法律學院副院長。戴耀廷主要的研究範圍包括香港特別行區基本法、比較憲法、行政法、人權法、宗教與法律、法律與政治、法律與管治、法治與法律文化。

在 2013 年，他推動「讓愛與和平佔領中環」運動，爭取在香港實現民主普選。在 2016 年，在立法會選舉中推動「雷動計劃」，爭取非建制派取得過半議席，及鼓勵選民策略投票。在 2017 年，他提出「風雲計劃」，希望反專制人士能取得超過一半的區議會議席。

Benny Y. T. TAI was born and educated in Hong Kong. He graduated at the University of Hong Kong and got his LL.B. in 1986 and P.C.LL in 1987. He then joined the Department of Law of the Citypolytechnic of Hong Kong as an assistant lecturer. In 1989, he went to London to study at the London School of Economics and Political Science and got his LL.M. (major in public law) in 1990. In 1991, he joined the Department of Law of the University of Hong Kong as a lecturer/assistant professor and is now an associate professor in Law at the University of Hong Kong. He was the Associate Dean of the Faculty of Law, University of Hong Kong from 2000 to 2008. He specializes in constitutional law, administrative law, human rights law and law and religion.

In 2013, he initiated the Occupy Central with Love and Peace campaign, a movement to exert pressure on the Chinese authorities to honour the promise of allowing Hong Kong people to elect their Chief Executive in 2017 through universal and equal suffrage. In 2016, he initiated the “Project ThinderGo” striving to win more than half of the seats of the Legislative Council by the anti-authoritariansm camp through encouraging strategic voting. In 2017, he initiated the “Project Storm” striving to win more than half of the seats in the Distrcit Council by the anti-authoritariansm camp.